United Nations

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1060

Case No. 1115: BADDAD

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, President; Ms. Marsha A. Echols; Mr. Omer Yousif Bireedo;

Whereas at the request of Moneer Baddad, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 January 2000 the time limit for the filing of an application with the Tribunal;

Whereas, on 17 December 1999, the Applicant filed an Application containing pleas which read as follows:

"II: Pleas

7. ... the Applicant respectfully requests the Tribunal ...

(c) *to decide* to hold oral proceedings ...;

8. ...

(a) *to rescind* the decision of the Secretary-General reducing the amount of compensation recommended by the Joint Appeals Board [(JAB)];

(b) *to find and rule* that the rationale employed by the Respondent for calculating and consequently reducing the amount of compensation due to the Applicant is invalid and unwarranted;

(c) *to find and rule* that the [JAB] erred as a matter of law and equity in failing to find the existence of prejudice and in failing to recognize the existence of a legitimate expectation for continued employment ...;

(d) *to find and rule* that the decisions not to grant the Applicant a further appointment and to separate him from service as of 31 December 1995 were motivated by prejudice and other extraneous considerations, and were flawed by procedural irregularities ...;

(e) *to order* that the Applicant be reinstated at the P-2 level with effect from 1 January 1996;

(f) *to award* the Applicant appropriate and adequate compensation to be determined by the Tribunal for the actual, consequential and moral damages suffered by the Applicant as a result of the Respondent's actions or lack thereof, and in particular taking into account the effects on health and well-being of the Applicant's son;

(g) *to fix* pursuant to Article 9, paragraph 1 of the Statute and Rules, the amount of compensation to be paid in lieu of specific performance at three years' net base pay calculated at the P-2 level in view of the special circumstances of the case;

(h) *to award* the Applicant as cost, the sum of $6,000.00 in legal fees and $500.00 in expenses and disbursements;

(i) *to award* specific damages in the amount of $25,000.00 for the losses suffered by the Applicant due to the Respondent's failure to reimburse him for the full amount of his travel expenses and for the loss of his personal belongings;

(j) *to award* additional damages in the amount of two years of net base salary calculated at the P-2 level for the delays and lack of responsiveness of the Administration in handling his claims."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 May 2000 and periodically thereafter until 31 August 2001;

Whereas the Respondent filed his Answer on 28 August 2001;

Whereas, on 29 January 2002, the Applicant filed Written Observations amending his pleas as follows:

"Paragraph 8:

The subparagraph should be re-numbered (a) through (j) respectively; subparagraphs (f) through (j) should be amended to read, "with interest at the rate of 8% from 1 January 1996".

Whereas, on 22 March 2002, the Respondent submitted comments on the Applicant's Written Observations;

Whereas, on 18 April 2002, the Tribunal submitted questions to the parties and the Applicant and the Respondent replied thereto on 3 May 2002;

Whereas, on 27 June 2002, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case, as set out in the report of the Joint Appeals Board, are as follows:

"***Employment History***

2. Appellant, a Jordanian national, was employed on Special Service Agreements (SSA) as an [Electronic Data Processing] Assistant from 12 June 1991 to 30 September 1992; the first SSA was issued in Kuwait for employment with the UN Iraq-Kuwait Observation Mission (UNIKOM).[1] Effective 1 October 1992, he was given a fixed-term appointment in UNIKOM as an [Electronic Data Processing] Assistant at the G-5 level; the personnel action gives UMN-QASR, Iraq as place of recruitment and duty station.[1] Appellant's fixed-term appointment was extended three times for six months, i.e. until 30 September 1994. It was extended for one month by a letter of appointment dated 24 October 1994. On 2 October 1994, Appellant submitted his resignation from UNIKOM, effective 31 October 1994; his letter is on the letterhead of the United Nations Supply Depot (UNSD) in Pisa, Italy.

3. From 1 November 1994 until 31 January 1995, Appellant was a Computer Programmer at the UN Logistics Base (UNLB) in Brindisi, Italy; the first SSA was issued by the UN Protection Force (UNPROFOR) on 18 January 1995. Subsequent SSAs were issued for periods 1 February to 31 March 1995 and 1 April to 30 April 1995. Effective 1 May, Appellant was appointed for seven months at UNLB under the 300 series as a Programme Manager at the GSL5 level. He separated from service on 31 December 1995.

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1 The OS file at Headquarters contains very limited documentation.

Summary of Facts

4.[2] According to Appellant, when UNIKOM moved from Kuwait to Iraq, the Kuwaiti authorities refused to allow him to commute like locally recruited Kuwaiti nationals because of his Jordanian citizenship. He agreed to give up his Kuwaiti residence and move to Iraq, 'on the promise that this could eventually lead to international status.'

5. From 21 February to 2 March 1994, Appellant then a UNIKOM staff member in Iraq, attended a course on the Field Operation Division (FOD) Automation Project at UNSD, Pisa, of which Mr. Klaus Rasmussen was Officer-in-Charge. Later in March, members of the FOD Automation Project team were at UNIKOM in Iraq for staff training and implementation of the project. By fax of 28 April 1994, Mr. Rasmussen asked Ms. Rachel Mayanja, CAO, UNIKOM, to 'arrange travel of Mr. Moneer Baddad to UNSD, Pisa'. He added that the Appellant was 'an essential part of FODs Automation Project team, and should arrive no later than 3 May 1994.'

6*. Shortly after returning to UNIKOM, Iraq, from the computer training program at UNSD, Pisa, according to Appellant, he was offered an eventual international appointment at the P-2 level if he would agree to join the FOD Automation team. This offer was confirmed by Mr. Dennis Beissel, Acting Director, FOD.

7. On 8 May 1994, Mr. Rasmussen arrived at UNIKOM and, on 10 May on UNIKOM letterhead, addressed a memorandum to Mr. Edgar Casals, Officer-in-Charge Administration, UNIKOM which said, in part:

'In connection with Mr. Moneer Baddad's participation in the FOD Automation Project, please arrange travel as follows:

Date	Destination
11 May 1994	Kuwait Airport by UN Helicopter
11 May 1994	Kuwait to Larnaca,Cyprus
12 May 1994	Larnaca, Cyprus to Vienna, Austria
12 May 1994	Vienna, Austria to Rome, Italy
12 May 1994	Rome, Italy to Pisa, Italy
12 August 1994	Pisa, Italy to Kuwait ...

'During the absence of Mr. Baddad, [Electronic Data Processing] support will be provided by staff from UNSD, Pisa: Ramon Del Rosario, Rosalinda Jose, and Naveed Hussain.'

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[2] This paragraph and subsequent paragraphs marked with asterisks are based on Appellant's account. They are included in the Summary of Facts in order to preserve a chronological presentation.

8. Also on 10 May, Mr. Casals sent the following fax to Mr. Dennis Beissel, Acting Director, FOD, attention: Mr. Rudy Sanchez:

'aaa Further to your fax FOD 639, dated 9 April 1994, pleased to inform that UNIKOM fully supports the Field Mission's Automation Project.

bbb Mr. Moneer Baddad, staff member of UNIKOM, will be traveling to UNSD, Pisa to participate in the preparation of the implementation of the personnel system in MINURSO and other field missions.

...

ddd During his absence UNIKOM would benefit from the assistance of experienced [Electronic Data Processing] staff who have worked in other mission on similar automation projects. Mr. Rasmussen has provided: Ramon del Rosario, Rosalinda Jose, and Naveed Hussain to be his replacements.

eee Please indicate your approval.'

9.* As Ms. Mayanja had earlier refused to release Appellant from UNIKOM (see paragraph 5 above) Messrs. Rasmussen, Rudy Sanchez, Beissel and Casals took advantage of her absence to have Appellant transported quickly out of Iraq via UN helicopter to Kuwait without having completed the necessary exit formalities. As a result, Appellant was deemed by the Iraqi authorities to have violated several laws and regulations.

10. From 21 May until 27 December 1994, Appellant worked as part of the FOD Automation Team at a number of field missions including MINURSO, UNOSOM, ONUMOZ, UNDOF, UNMOGIP, UNPROFOR and UNOMIG. He was not issued a laissez-passer, but travelled on his Jordanian passport, returning to UNSD, Pisa for two weeks in September/October 1994, and finally to Pisa and then UNLB, Brindisi at the end of the year. From 31 October 1994, when his resignation from UNIKOM took effect, until18 January 1995, when an SSA was issued with retroactive effect, Appellant had no contractual relationship with the Organization.

11*. In October 1994, Mr. Rasmussen informed Appellant that the Iraqi authorities were disturbed because of his illegal departure and that he 'would have to resign from UNIKOM since it would be dangerous for [him] to return.' He submitted his resignation in the expectation of fair treatment by the Organization. Appellant was thereby forced to abandon his belongings in Iraq, as his pregnant wife and son had returned to Jordan. They were unable to join him in Italy until 1995.

12*. In early 1995, Appellant was offered a local appointment 'on SSA at the G-5 level, step 1 level, which represented a considerable loss of income not only from the P-2 level he had been promised in order to induce his relocation, but also from his former position in UNIKOM. More importantly, his newly born son required emergency

medical treatment. But since they were not Italian they were precluded from the national health plan. Most of the Appellant's salary went towards his son's hospital bills, but even this was not enough to provide him with the treatment he required. As a result, his son developed severe health problems which have rendered him developmentally disabled. He is now undergoing treatment in the United States for the learning disabled.'

13. On 11 May 1995, Appellant sent Mr. Marcel Savard, Acting Chief, UNLB a summary of his four years of employment with the UN under cover of a memorandum which said 'my initial thoughts were to send this matter to the highest authorities in United Nations Headquarters, New York, in the hope that I will at last be given fair treatment. I have on second thoughts and through my respect to you decided to seek your opinion over which course of action to take.'

14. On 19 June 1995, the following cable was sent to Mr. Savard under the authority of Mr. Luis da Costa, Chief, Personnel Management and Support Service, Field Administration and Logistics Division (FALD, successor to FOD):

> 'Subject: *Mr: Moneer Baddad - Letter of complaint*
>
> Wish acknowledge receipt of you (sic) letter of 12 May 1995 forwarding complaint of UNIKOM local staff member Moneer Baddad. It is rather unfortunate that Mr. Baddad's problems took such a longtime to reach us and we do agree that the staff member's movements were badly handled.
>
> As a first step, we would appreciate receiving any travel documents to substantiate non-payment of allowances so that these could be authorized.
>
> We note that this is the second staff member who received promises from [Electronic Data Processing] Management which could not be met. While we would try to deal with this matter as a separate issue, we must first pay all outstanding claims owing to Mr. Baddad.
>
> We look forward to your urgent response. Please assure staff member that his complaint is being reviewed.'

15*. Appellant rejected the offer of a short-term, General Service level mission assignment [with the United Nations Angola Verification Mission (UNAVEM)] which was made to him in August 1995 because 'it did not address any of the outstanding issues the Appellant had raised regarding his career and his family's situation in Italy.' When an audit of UNSD, Pisa was begun, Lieutenant-General Manfred Eisele, ASG/DPKO met privately with Appellant in Brindisi 'and cautioned him not to meet with the auditors. Concerned over his future employment status, the Appellant complied with the request ...'

16. On 25 August 1995, Appellant sent a letter including a further complaint to Mr. Hocine Medili, Director, FALD. In the absence of a response, Appellant then addressed himself to Mr. Kofi Annan, then Under-Secretary-General, Department of Peace-keeping

Operations (DPKO), on 20 September 1995, and on 29 December 1995, to Mr. Jean Claude Aimé, then Chef de Cabinet.

17*. When Appellant's short-term appointment expired on 31 December 1995, the Appellant and his family were left [virtual refugees] in Italy, having no legal residence status, no home to return to and no source of income. The Organization had never addressed his claims for reimbursement of travel expenses from months before. The Appellant applied for refugee status from the United States Government, and eventually came to New York. He continued to pursue his claims with the UN and over the period of about a year pressed for an answer. He also contacted the Office for Internal Oversight Services and met with investigators who were still looking into irregularities in overseas missions. Finally, in early 1997 he received notification from his bank that a transfer of funds had occurred. No official communication from the UN was ever provided as to what this transfer represented."

On 16 June 1997, the Applicant requested the Secretary-General to review the administrative decisions not to renew his fixed-term appointment and not to grant him an appointment at the professional level.

On 30 September 1997, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 15 January 1999. Its considerations, conclusions and recommendations read, in part, as follows:

"***Considerations of the Panel***

...

26. ... The Panel was of the view that the Respondent amply demonstrated a failure to follow proper administrative procedure, and that it should be [e]stopped from invoking the 60 day limitation as against the Appellant. Furthermore, the Panel observed that there were exceptional circumstances in this case which justified a waiver of the time limits, in accordance with Staff Rule 111.3(d).

...

30. ... [T]he Panel examined the circumstances surrounding the Appellant's departure from Iraq in 1994 ... It observed that the Respondent did not use proper procedure when it decided to transfer the Appellant to Pisa, Italy. The Panel was of the opinion that the manner in which the Appellant was requested to leave Iraq and join the 'Automation Team' in Italy was tantamount to maladministration. It observed that proper administrative practice would have been to prepare the necessary exit formalities for the Appellant before he traveled to Italy. As a consequence of this administrative flaw, the Appellant was deemed to have violated Iraqi laws by leaving the country illegally. The

Panel observed that the Appellant was kept in a state of uncertainty, being transferred from place to place on temporary contracts or SSAs. That he was not being fairly treated was evident from numerous communications exchanged among the officials dealing with his case. ...

31. The Panel then turned to the Appellant's contention that he was wrongly recruited as a local staff member in Italy ... The Panel was of the opinion that the Appellant should have been considered an 'international staff member' while he served in Italy. It noted that the administrative decision to consider the Appellant a 'local staff member' resulted in substantial injury to the Appellant. ...

32. ... The Panel was convinced that the Appellant was asked to resign from UNIKOM once his superiors decided to give him an appointment with UNLB in Italy. The Panel noted that after the Appellant was induced to resign from UNIKOM in October 1994, the Respondent failed to take any action to remedy his contractual situation. As a result, the Appellant had no contractual relationship with the Organization from the time he resigned from UNIKOM until January 1995, while he was still being sent to many field missions.

...

34. The Panel observed that the Respondent had lured the Appellant with promises of an 'international appointment' in the Professional category, which induced the Appellant to agree to serve in different field missions, sometimes without a contract with the UN. The Panel was of the view that the methods used by the Respondent to secure and retain the Appellant's services were very unsatisfactory and deviated from the standard of conduct which should be expected from the Organization.

35. The Panel noted that the Appellant has alleged that the mental and psychological problems of his younger son, documented in papers submitted by him, can be attributed to the inadequacy of medical assistance available to his son during his early years of illness in Italy. Further, that the lack of adequate medical treatment was a direct result of the precarious financial and unfair contractual position in which the UN had placed him. The Panel decided that, in two senses, it was not competent to deal with this issue. It did not feel, however, that it could simply ignore it. ... In the opinion of the Panel, the Administration should undertake a serious inquiry to determine the extent, if any, of its responsibility to the Appellant and his younger son.

Conclusions and Recommendations

...

37. The Panel *unanimously agreed* that there was no legal expectancy for the renewal of the Appellant's appointment. It also concluded that there was no evidence that either prejudice or other extraneous circumstances had motivated the Respondent's decision not to renew the Appellant's appointment.

38. The Panel *unanimously agreed* that the Respondent failed to follow proper procedure in dealing with the Appellant's affairs. It *unanimously agreed* that owing to the errors by the Administration in the handling of his situation, the Appellant should be compensated for the direct material and moral injury to which he was subjected.

39. The Panel *unanimously recommends* that the Appellant be paid 5 years' base salary, computed on the basis of the G-7 or P-2 level (whichever is greater) with the rate in effect at the time for internationally recruited staff members in Rome."

On 12 July 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"... The Secretary-General ... has taken note of the Board's decision to waive the time limits in your case. With respect to the decision not to renew your fixed-term appointment, the Secretary-General has taken note of, and agr[e]es with, the Board's conclusion that you did not discharge the burden of proof that the contested decision was tainted by prejudice or other extraneous factors and its recommendation that this part of the appeal be rejected. The Secretary-General also agrees with the Board's conclusion that you ... had no legal expectancy of continued employment.

...

The Secretary-General agrees with the Board that no proper procedure was followed when you left Iraq and were transferred to Pisa, Italy. Without detracting from the Administration's responsibility in this respect, the Secretary-General considers that you, as an Iraqi resident, must have known that your departure from Iraq without first completing the exit formalities was irregular and, accordingly, you bear a considerable degree of responsibility for the consequences of your irregular departure which you undertook voluntarily. Nevertheless, the Secretary-General agrees with the Board that you should be compensated for the injury you suffered as a result of the Administration's errors and breaches of proper procedure in your case. The Secretary-General observes that the Board could not establish an exact dollar value for the injury you suffered and has provided no justification for the amount it recommended. The Secretary-General is not, therefore, in a position to accept the amount recommended by the Board. He has instead decided to compensate you in the amount of 2 years net base salary at the level and step held by you at the time of your separation ..."

On 17 December 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant was not accorded fair consideration for the renewal of his contract. The decision not to renew the Applicant's contract and to terminate his appointment was tainted by procedural irregularities which constitute lack of due process and abuse of authority and violate the principal of fair treatment.

2. The JAB erred in concluding that there was no evidence of prejudice or other extraneous circumstances that motivated the Respondent's decision.

3. The JAB erred in determining that he had no legal expectancy for the renewal of his appointment.

4. The Respondent's decision to reduce the amount of compensation recommended by the JAB is arbitrary and unfair.

Whereas the Respondent's principal contentions are:

1. The Applicant had neither the right nor the legal expectancy of continued employment with the United Nations and the non-renewal of his appointment did not violate his rights.

2. The decision not to renew the Applicant's limited duration appointment was not motivated by prejudice, abuse of authority, improper motive or other extraneous factors, nor was the Applicant a victim of discrimination.

3. The Applicant was adequately compensated for the injuries he suffered.

The Tribunal, having deliberated from 27 June to 26 July 2002, now pronounces the following Judgement:

I. The Applicant claims that the Respondent's decisions not to grant him a further appointment and to separate him from service as of 31 December 1995, were motivated by prejudice and other extraneous considerations, and were flawed by procedural irregularities and that these procedural irregularities constitute a lack of due process and violate the principle of fair treatment. The Tribunal must examine the Applicant's claims.

At the relevant time, the Applicant was serving on an appointment of limited duration, subject to the 300 series of the Staff Regulations and Rules. Staff rule 304.4(a) provides that "[a]ppointments under these Rules carry no expectancy of renewal" and staff rule 309.5(a)

provides that "[a]ppointments under these Rules shall expire automatically and without prior notice on the expiration date of the period specified in the letter of appointment". The Tribunal has consistently affirmed this in its decisions. (See Judgements No. 205, *El-Naggar* (1975); No. 427, *Raj* (1988); No.521, *Saeed* (1991); and, No. 626, *Selvadurai* (1993).) At the same time, the Tribunal has consistently held that an expectancy may be created by surrounding circumstances. (See Judgements No. 142, *Bhattacharyya* (1971) and No. 614, *Hunde* (1993).) In this regard, the Tribunal reaffirms the outline of the legal principles involved in expectation of continued employment of staff members on fixed-term appointments contained in the Report to the Fifty-first session of the General Assembly, A/C.5/51/34 "Ratio between career and fixed-term appointments", dated 22 November 1996, as follows:

> "While reaffirming that the fixed-term appointment, by its terms, does not create an expectancy of renewal, the Tribunal examines all the surrounding circumstances to determine whether an expectancy of renewal was created in the particular case - for example through a verbal or written commitment, albeit informal, made to the staff member by the programme manager that the appointment would be renewed ... even in those cases where the decision not to renew was purely discretionary, the Tribunal always gives careful attention to the issue of whether the decision was affected by lack of due process, mistake of fact, prejudice or other extraneous motives. In such cases, the Tribunal would normally award damages to the staff member whose appointment was allowed to expire, on the ground that it is an implied condition of employment that all decisions, including a decision not to renew an appointment, are taken fairly and in the interest of the Organization."

In the present case, having considered the totality of circumstances, the Tribunal determines that the Applicant did not have a right to a renewal of his contract.

II. The Applicant contends that his case goes beyond the issue of non-renewal of contract, as he was the victim of systematic and gross procedural irregularities, lack of due process and unfair treatment. In support of his claims, the Applicant argues that he was irregularly removed from Iraq, in spite of the fact that the Officer-in-Charge of UNSD, Pisa, officially requested the Chief Administrative Officer, UNIKOM, Baghdad, to "arrange travel of [the Applicant] to UNSD, Pisa ... authorizing his official travel" and "receive approval from the Iraqi authorities for his return into the country after his temporary assignment to this project." The Tribunal notes that, contrary to this request, the Officer-in-Charge, UNIKOM, Baghdad, took advantage of the

absence of the Chief Administrative Officer, UNIKOM, Baghdad, and transported the Applicant quickly out of Iraq by helicopter to Pisa, without having completed the necessary exit formalities. As a result, the Applicant was deemed by the Iraqi authorities to have violated several laws and regulations, complicating his return to Iraq, or to his home country, Jordan, because of the consequences of his illegal departure from Iraq. The Applicant also referred to a number of promises made to him by the Organization, such as a promise made in 1991 "for a better post" and a promise made in 1994 for a professional post at the P-2 level if he would agree to join the FOD Automation team. After joining the team, another promise was made this time for a P-3 level post, which was afterwards changed to a promise of a G-6 local post with a monthly salary of US$ 4,500.

Subsequently, the Applicant was asked to resign from UNIKOM by UNSD, Pisa, because of his illegal departure from Iraq, which he did, expecting fair treatment by the Organization.

The Tribunal notes that the Respondent maintains that the Applicant "as an Iraqi resident must have known that his departure from Iraq without first completing the exit formalities was irregular and accordingly ... bears a considerable degree of responsibility for the consequences of his irregular departure which he undertook voluntarily." It also notes that the Applicant contends that he was unaware that he was being removed across an unauthorized border crossing without notifying the Iraqi authorities or receiving proper clearance and that he assumed that the necessary formalities had been undertaken by the Administration. The Tribunal is of the opinion, that there is no legal basis for making the Applicant pay for his readiness to follow his superiors' instructions to leave immediately, as well as for the errors and abuses, which were committed by other United Nations officials in the course of their official duties.

III. The Applicant's situation was further complicated by the fact that in Italy he was offered a local appointment on SSA at the G-5, step 1 level. This represented a considerable loss of income from his former position in UNIKOM and a far cry from the P-2 level he had been promised in order to induce his relocation. In this regard the JAB pointed out that "the Appellant should have been considered an 'international staff member' while he served in Italy". It noted that "the administrative decision to consider the Appellant a 'local staff member' resulted in substantial injury to the Appellant". In particular, since the Applicant was a local recruit, he did not receive any medical coverage from the United Nations for his family. The Panel particularly

deplored the fact that the Applicant's new-born son, who required emergency medical treatment, "could not receive such treatment because of the unfair contractual position in which the Respondent had placed the Appellant", and that, as a result, his son developed several health problems, which have rendered him developmentally disabled.

The Tribunal observes that the Respondent offered the Applicant a short-term mission assignment with UNAVEM, which he turned down. In the view of the Applicant, this assignment was a continuation of the same inadequate short-term solutions, which had preceded it. It was not designated as a family duty station and the Applicant did not wish to leave his family in Italy, where they had no legal status. According to the Applicant, the mission assignment had been designed primarily to remove him from Italy while OIOS was carrying out investigations into the operations in Pisa, about which the Applicant had considerable knowledge. The Applicant added that he had been advised not to meet with the auditors and was at the same time promised an eventual promotion.

The jurisprudence of the Tribunal has well established that decisions taken by the Respondent, including those regarding separation from service, must respect the principles of due process and fair treatment. (See Judgements No. 199: *Fracyon* (1975); No. 242: *Klee* (1979) and No. 345: *Najjar* (1985).) The Tribunal notes that the Respondent himself acknowledges that the Applicant did not receive fair treatment, as expressed by the Chief, Personnel Management and Support Service, FALD/DPKO, in a cable to the Acting Chief, UNSB, Brindisi, in which the Chief stated "we do agree that the staff member's movements were badly handled ... We note that this is the second staff member who received promises from [Electronic Data Processing] Management which could not be met".

The Tribunal is in agreement with the JAB that the methods used by the Respondent to secure and retain the Applicant's services were unsatisfactory and deviated from the standard of conduct, which should be expected from the Organization. The irregularities and breaches of proper procedure by the United Nations officials responsible for the Applicant's hasty departure from Iraq, proved to be extremely prejudicial to him when his contract was not renewed. The Respondent recognized this and the Under-Secretary-General for Management informed the Applicant that "the Secretary-General agrees with the Board that you should be compensated for the injury you suffered as a result of the Administration's errors and breaches of proper procedure in your case".

It is significant to note in this context that the ILO Administrative Tribunal in its Judgement No. 495, *Olivares Silva* (1982) stated:

> "the first and greatest safeguard against the operation of prejudice lies in the procedural requirements which every set of staff regulations contains and whose main objective is to exclude improper influence from an administrative decision. ... [P]roof of prejudice is rendered unnecessary when procedural requirements have not been observed."

IV. In conclusion, the Tribunal concurs with the views unanimously adopted by the JAB and holds that, although the Applicant had no legal expectancy for the renewal of his appointment, the Respondent failed to follow proper procedure in dealing with the Applicant. Moreover, the Respondent failed to initiate the inquiry recommended by the JAB, to determine "the extent, if any, of his responsibility to the Applicant and in particular to his younger son".

For all the above reasons, the Applicant should be compensated for the direct material and moral injury to which he and his family were subjected.

V. Accordingly, the Tribunal orders the Respondent to pay the Applicant the amount of $50,000 as compensation for the injury he suffered, in addition to the amount he already received.

VI. All other pleas are rejected.

(Signatures)

Mayer GABAY
President

Marsha ECHOLS
Member

Omer Yousif BIREEDO
Member

Geneva, 26 July 2002

Maritza STRUYVENBERG
Executive Secretary